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Litigating Educational Adequacy in North Carolina: A Personal Account of *Leandro v. State*, 488 S.E.2d 255 (N.C. 1997)

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I. INTRODUCTION

In the spring of 1994, a group of school districts in North Carolina asked me and my colleagues to investigate the possibility of a lawsuit challenging the State's school finance system. In fall 2002, we received a favorable decision from the state supreme court regarding the right to a sound basic education, which was followed by a lengthy trial and a largely favorable decision from the trial court.¹ The State appealed, and the appeal process lasted several months. I will describe here the background and high points of the litigation and the recent July 30, 2004 ruling in the case.²

II LITIGATING *LEANDRO*

Our prospective clients were a small group of largely rural and poor school districts in the eastern part of North Carolina. The school superintendents in these districts felt strongly that the existing finance system was inherently unfair to the extent that it relied on local property taxes to fund education. Because of the limited tax bases in these districts, the money available for education was substantially

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1. *Leandro v. State*, 488 S.E.2d 255 (N.C. 1997).

2. See *infra* Part III.

less than in wealthier districts, and the educational quality suffered accordingly.

Because of my constitutional law experience, I was asked to do the initial legal research for this possible claim. I quickly determined that an earlier decision of the North Carolina Court of Appeals presented a serious roadblock.³ The case had rejected a state equal protection claim based on unequal funding for a poor school district. An equal protection challenge to the existing system looked unpromising.

For this reason, I reviewed the possibility of a claim challenging the existing school finance system based on educational adequacy. The education section of the North Carolina Constitution provided a good starting point. "The people have a right to the privilege of education, and it is the duty of the State to guard and maintain that right."⁴ "The General Assembly shall provide by taxation and otherwise for a general and uniform system of free public schools . . . wherein equal opportunities shall be provided for all students."⁵ There were few cases interpreting this language. Part of the wording dated from the reconstruction era, while part of it was drafted in the 1970s. The historical evidence pertaining to the language was limited, but the language itself was strong support for a crucial proposition—that the North Carolina Constitution provided a substantive right to an adequate education. Caselaw from several other states, including Kentucky and West Virginia, also supported this approach.⁶

The next question was whether our clients could credibly argue that the State had denied them a right to an adequate education. To answer this question, we collected extensive data regarding our five client districts. The State had rated these districts as low-performing based on test scores and other data. Some of the specialists in the State's Department of Public Instruction were sympathetic to the plight of these poor school districts, and provided reports regarding these schools and others. Using data generated by the State and by our school districts, we compared our districts both to state averages and to wealthier districts.

We found that our poor school districts were at a disadvantage in several respects compared to the wealthier districts in the state. Even though the State provided a substantial portion⁷ of funding for local districts, individual districts varied considerably in their ability to raise additional funds from property taxes. These funding differences

3. *Britt v. State Bd. of Educ.*, 357 S.E.2d 432 (N.C. Ct. App. 1987), *review denied and appeal dismissed*, 361 S.E.2d 71 (N.C. 1987).

4. N.C. CONST. art. I, § 15.

5. *Id.* art. IX, § 2.

6. *Rose v. Council for Better Educ.*, 790 S.W.2d 186 (Ky. 1989); *Pauley v. Bailey*, 324 S.E.2d 128 (W. Va. 1984).

7. The State provided about two-thirds on average.

translated into gaps of hundreds of dollars per classroom each year. These funding differences affected teacher pay and recruitment, availability of books and other materials, the variety of program and course offerings, the quality of technology and equipment, and the maintenance of facilities. We also observed large differences in various performance indicators, including reading and math test scores, SAT and other standardized test scores, and reports of performance of high school graduates in the University of North Carolina system.

In investigating the school-funding structure, we spoke with local school administrators and parents. Several parents and their students from each school district volunteered as plaintiffs based on their dissatisfaction with the quality of the educational opportunities provided by the State. We anticipated (correctly, it turned out) that the State would attempt to challenge the standing of the school districts, and expected that the inclusion of concerned parents and students would help address this point.

One of the students I spoke with was Rob Leandro (pronounced Lee-ANN-dro) of Hoke County. Rob was then in high school and was particularly articulate about the weaknesses of the educational opportunities available to him. Based in part on his strong interest, and in part on the interesting sound of his name, he became our lead plaintiff. It later became clear that Rob was an exceptionally gifted individual, and he eventually received numerous scholarship offers to top universities. The State eventually focused on Rob's successes in an attempt to prove that the educational offerings available to him were more than adequate. Although this argument seemed superficial, we were forced to carefully explain that his successes were highly unusual and were explained in large part by his supportive home environment.

Based on extensive research, we filed our initial complaint in May 1994. Our complaint contended that the existing school finance system was unconstitutional based on alternative grounds of equity (that is, equal protection) and adequacy (that is, lack of the substantive elements required for an education under the state constitution). We intended to distinguish the *Britt*⁸ case, but if our equity argument failed, we would proceed on the grounds of adequacy.

Soon after filing the complaint, six wealthy districts intervened in the case as plaintiffs. Using phrasing drawn from our complaint, the complaint of these districts also presented claims of equity and adequacy. The wealthy districts focused on the special needs of their poor and minority children and the weighty burdens of their municipal budgets.

8. *Britt v. State Bd. of Educ.*, 357 S.E.2d 432 (N.C. 1987).

Our chosen venue was Hoke County, the smallest and poorest of our client districts.⁹ The State obtained a change of venue to Wake County, one of the wealthy intervenor districts, where our state capital of Raleigh is located. The State moved to dismiss for failure to state a claim. This motion was denied, and the State appealed.

The Court of Appeals reversed based on *Britt*.¹⁰ We sought discretionary review from the state supreme court, which took the case. The supreme court, with one justice dissenting, rejected our equal protection argument, but unanimously accepted our contention that the state constitution provided a fundamental right to an education of good quality.¹¹ The North Carolina Supreme Court set forth in several paragraphs the elements of the constitutional right, which it defined as "a sound basic education."¹²

These elements included substantive knowledge to be taught in areas such as reading, writing, mathematics, science, geography, and history, and also a general requirement of "sufficient academic and vocational skills to enable the student to compete on an equal basis with others in further formal education or gainful employment in contemporary society."¹³ The court wrote: "An education that does not serve the purpose of preparing students to participate and compete in the society in which they live and work is devoid of substance and is constitutionally inadequate."¹⁴

The supreme court also described the factors to be considered in determining if the constitutional standard of a sound basic education had been violated by the State. These included both output or outcome measures, such as student performance on standardized tests, and input measures, such as the level of per-pupil expenditures.¹⁵

Following remand, the case was assigned to Judge Howard E. Manning, Jr. Judge Manning established a procedure of periodic in-chambers meetings of the court and counsel to address informally issues of discovery and procedure. The judge also made himself available as needed to assist the parties as disputes arose. At the direction of Judge Manning, the parties considered the feasibility of focusing the initial phase of the proceedings on a single school district. Hoke County was ultimately chosen as the model district.

We were content with the choice of Hoke, because in several respects it epitomized the problems of poor, rural school districts. Its

9. The others were Cumberland, Halifax, Robeson, and Vance counties.

10. *Leandro v. State*, 468 S.E.2d 543 (N.C. Ct. App. 1996), *rev'd*, 488 S.E.2d 249 (N.C. 1997).

11. *Leandro v. State*, 488 S.E.2d 249 (N.C. 1997); *see* N.C. CONST. art. IX, § 2.

12. *Leandro*, 488 S.E.2d at 255.

13. *Id.*

14. *Id.* at 254.

15. *Id.*

population is about 28,000, and its county seat, Raeford, has about 4,000 residents. Farming is a major economic activity, and the leading industries are poultry processing and light manufacturing. Hoke County has no universities, no museums, and no major shopping centers. There is no hospital. The primary entertainment on Friday nights in the fall is the high school's football games. The main civic event of the year is the North Carolina Turkey Festival.

The Hoke school system at that time included six elementary schools, two middle schools, and one high school, together serving about 6,000 students. About half of those students were African-American, about fourteen percent Native American, about three percent Hispanic and other minorities, and the remaining third were white. Approximately three-quarters of the students were officially designated as eligible for free or reduced-price lunch.

In the course of preparing for trial, I came to know the Hoke County schools well. In some schools, I observed worn-out buildings with no soap or paper towels in the bathrooms. I saw science classrooms that lacked basic science equipment, and social studies classrooms with out-of-date maps and globes. There were also three relatively new and attractive schools, although these schools had problems of overcrowding and lack of maintenance. I became well-acquainted with the best motel in Hoke¹⁶ and the best lunch spots.

To find witnesses, I interviewed many teachers and administrators. Not surprisingly, I found that many of the educators did not have much experience outside Hoke County and did not fully appreciate the shortcomings of their system. At the same time, I met some accomplished professionals who were dedicated to their students and had considerable understanding of their situation. The unofficial motto, which I heard from a number of these educators, was, "We do the best we can with what we've got."

One of the projects I organized to educate my potential witnesses was a field trip to another school district with considerably more resources. One Friday, a large van of teachers, students, and parents traveled to Chapel Hill, North Carolina, and visited a group of schools there. As we viewed the well-designed and well-equipped facilities, the Hoke group reacted first with surprise and then with a degree of anger as they realized their relative disadvantage.

The State demanded extensive discovery, including production of records from every school and depositions of every principal and top administrator. Deposition preparation took many hours, to ensure that the school witnesses would not inadvertently hurt our case. The deposition process, while arduous, was useful in revealing that some

16. The Days Inn.

administrators and others had the necessary gumption to serve as effective witnesses.

For our part, we obtained some of our most useful discovery through Rule 30(b)(6) depositions.¹⁷ The State produced, as its official representatives, several top assistant superintendents to address specific areas. These depositions, along with depositions of the state superintendent and the chairman of the state board of education, yielded significant concessions regarding the difficulties faced by Hoke and other similar districts, and the importance of additional resources to address student needs.

After extensive discovery, we finally began our trial in September 1999. Our lead witness was Jeff Moss, then assistant superintendent for the Hoke schools. Under my questioning, Mr. Moss testified for a day-and-a-half regarding numerous challenges faced by the school system. His testimony touched on all the themes we would eventually develop, including the poverty of much of the student population and their special needs, the lack of supplemental programs and materials, difficulties in recruiting and retaining quality teachers, deficiencies in materials and equipment, including technology, and problems with school facilities. Mr. Moss also testified about the poor performance of Hoke students on the state's standardized tests and other tests. He withstood with dignity a highly unpleasant cross examination from the State that touched on such personal matters as his prior marriage and the performance of his children.

The trial was quickly interrupted by Hurricane Floyd, which caused extensive flooding in eastern North Carolina, and was extended by other problems, including a shortage of courtroom space. Ultimately the trial lasted twenty-three days. There were twenty-six witnesses and 670 exhibits. Experts testified for both sides regarding school resources, and student achievement.

The State's central theme was that it was satisfying constitutional standards simply by virtue of providing schools that were operating. The State emphasized that it had, among other things, a system for licensing teachers, a system for distributing funding, and a system for evaluating student performance. It also argued that any problems in Hoke were Hoke's own fault and not the State's.

Judge Manning issued his decision in four lengthy installments, the first of which was filed in October 2000.¹⁸ In addressing the central issues, Judge Manning focused particularly on the failure of approximately a third of Hoke students to satisfy the State's own standard for grade level performance. Judge Manning placed particu-

17. N.C. R. Crv. P. 30(b)(6).

18. Hoke County Bd. of Educ. v. State, No. 95CVS1158, 2000 WL 1639686, at *1-45 (N.C. Super. Ct. Oct. 12, 2000).

lar emphasis on the needs of at-risk children and found that these students needed special help to meet educational standards. He also placed particular emphasis on early education and directed that a pre-kindergarten program be offered to all at-risk students in the state. In a supplemental decision, Judge Manning unequivocally rejected the State's efforts to blame Hoke for its problems and made clear that the ultimate responsibility for providing a sound basic education lies with the State. The judge directed the State to begin working with Hoke to address the constitutional deficiencies in the schools.

Although the State appealed this decision, it did not seek a stay. A team from the state Department of Public Instruction visited Hoke and began evaluating its programs. We pressed for concrete assistance, which was not forthcoming. In the meantime, the appeal proceeded for almost another two years.

During the course of proceedings from 1994 to late 2002, the State increased its program of supplemental funding for low-wealth schools. This program received approximately \$18.2 million in 1994. In 2001, the program received \$85 million. The low-wealth money in Hoke County has paid for teachers, books and equipment that were badly needed, although it has not come close to meeting all the important needs. It is widely thought that the increases in state funding for this program were in large part the result of the *Leandro* case.

III CONCLUSION: RECENT DEVELOPMENTS

On July 30, 2004, the plaintiffs achieved a significant victory. The Supreme Court of North Carolina issued a unanimous opinion affirming in large part the decision of Judge Manning.¹⁹ The court rejected the State's contention that the trial court applied the wrong standards for determining that students had been deprived of their constitutional right to a sound basic education, and held that the plaintiffs had made a clear showing of a constitutional violation. The following points from the lengthy opinion are particularly significant for counsel addressing school finance issues.

The court approved the basic structure of the lawsuit as a declaratory judgment action. It found that the trial court was correct in considering evidence regarding all Hoke County students, rather than limiting evidence to the named plaintiffs. The court found that in declaratory judgment actions involving a significant public interest, the issue was whether there was a clear showing of a constitutional violation with respect to students within the zone of interest protected by the constitutional right at issue.²⁰

19. *Hoke County Bd. of Educ. v. State*, 599 S.E.2d 365 (N.C. 2004).

20. *Id.* at 376-77.

The court upheld the trial court's determination that there was such a clear showing with respect to the students in Hoke County. The court discussed both test scores and other evidence of outputs, including graduation rates, dropout rates, postsecondary performance in community colleges and public universities, and evidence from employers of inability to compete in the job market. It found that an inordinate number of Hoke students had consistently performed below the state average in all available output measures.²¹

In addition, the court upheld the trial court's conclusion that the State was required to provide a resource allocation system that provided competent teachers in every classroom, competent principals in every school, and resources necessary to support effective instruction. The court noted that Judge Manning focused particularly on the needs of at-risk students in Hoke County, but it made clear that the right to a sound basic education applied to non-at-risk students as well.²²

The only significant point on which the supreme court declined to affirm Judge Manning concerned pre-kindergarten. The court found that the trial court's order of pre-kindergarten for all at-risk students was premature at this juncture.²³

With respect to the remedy, the court found that Judge Manning acted reasonably in declining to dictate a solution and instead allowing the State an initial opportunity to assess resource allocations and correct constitutional deficiencies. It noted that the legislative and executive branches share responsibility for educating students. At the same time, the court made clear that it remains the ultimate arbiter of the Constitution. The court remanded the case for further proceedings as necessary with respect to other counties.²⁴

21. *Id.* at 381-86.

22. *Id.* at 388.

23. *Id.* at 395.

24. *Id.* at 397.